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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

<p>Jesus A Figueroa,</p> <p>Plaintiff,</p> <p>v.</p> <p>Law Offices of Patenaude & Felix, A.P.C. and NCEP, LLC,</p> <p>Defendant.</p>	<p>Case No: 5:14-CV-00325-JGB-DTB</p> <p>First Amended Complaint</p> <p>Jury Trial Demanded</p>
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INTRODUCTION

- The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress wrote the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter “FDCPA”), to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt

1 collection practices are not competitively disadvantaged, and to promote
2 consistent State action to protect consumers against debt collection abuses.

3 2. The California legislature has determined that the banking and credit system
4 and grantors of credit to consumers are dependent upon the collection of just
5 and owing debts and that unfair or deceptive collection practices undermine
6 the public confidence that is essential to the continued functioning of the
7 banking and credit system and sound extensions of credit to consumers. The
8 Legislature has further determined that there is a need to ensure that debt
9 collectors exercise this responsibility with fairness, honesty and due regard
10 for the debtor's rights and that debt collectors must be prohibited from
11 engaging in unfair or deceptive acts or practices.

12 3. Jesus A Figueroa, ("Plaintiff"), through Plaintiff's attorneys, brings this action
13 to challenge the actions of Law Offices of Patenaude & Felix, A.P.C.,
14 ("Patenaude") and NCEP, LLC, ("NCEP"), hereinafter ("Defendants"), with
15 regard to attempts by Defendants to unlawfully and abusively collect a debt
16 allegedly owed by Plaintiff, and this conduct caused Plaintiff damages.

17 4. Plaintiff makes these allegations on information and belief, with the exception
18 of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which
19 Plaintiff alleges on personal knowledge.

20 5. While many violations are described below with specificity, this Complaint
21 alleges violations of the statutes cited in their entirety.

22 6. Unless otherwise stated, all the conduct engaged in by Defendants took place
23 in California.

24 7. Any violations by Defendants were knowing, willful, and intentional, and
25 Defendants did not maintain procedures reasonably adapted to avoid any such
26 violation.

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JURISDICTION AND VENUE

8. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. § 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.

9. This action arises out of Defendants' violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal Fair Debt Collection Practices Act, California Civil Code §§ 1788-1788.32 ("Rosenthal Act").

10. Plaintiff is a natural person who resides in the City of San Bernardino, County of San Bernardino, State of California.

11. Plaintiff resides in San Bernardino County, as defined by 28 U.S.C. § 1391c(1), the judicial district in which this lawsuit is brought.

12. At the time of the substantial part of the events or omissions giving rise to the claim occurred, Plaintiff was physically located in the City of San Bernardino, County of San Bernardino, State of California.

13. Because a substantial part of the events or omissions giving rise to the claim occurred in San Bernardino County, venue is proper pursuant to 28 U.S.C. § 1391b(2).

14. At all times relevant, Defendants conducted business within the State of California.

PARTIES

15. Plaintiff is a natural person who resides in the City of San Bernardino, State of California.

16. Patenaude is located in the City of San Diego, in the State of California.

17. NCEP is located in the City of Carson City, in the State of Nevada.

18. Plaintiff is obligated or allegedly obligated to pay a debt, and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

19. Defendants are persons who uses an instrumentality of interstate commerce or the mails in a business the principal purpose of which is the collection of

1 debts, or who regularly collects or attempts to collect, directly or indirectly,
2 debts owed or due or asserted to be owed or due another and are therefore
3 debt collectors as that phrase is defined by 15 U.S.C. § 1692a(6).

4 20. Plaintiff is a natural person from whom a debt collector sought to collect a
5 consumer debt which was due and owing or alleged to be due and owing from
6 Plaintiff, and is a “debtor” as that term is defined by California Civil Code §
7 1788.2(h).

8 21. Defendants, in the ordinary course of business, regularly, on behalf of
9 himself, herself, or others, engages in debt collection as that term is defined
10 by California Civil Code § 1788.2(b), and are therefore debt collectors as that
11 term is defined by California Civil Code § 1788.2(c).

12 22. This case involves money, property or their equivalent, due or owing or
13 alleged to be due or owing from a natural person by reason of a consumer
14 credit transaction. As such, this action arises out of a consumer debt and
15 “consumer credit” as those terms are defined by Cal. Civ. Code § 1788.2(f).

16 **FACTUAL ALLEGATIONS**

17 23. Sometime before November 28, 2013, Plaintiff is alleged to have incurred
18 certain financial obligations.

19 24. These financial obligations were primarily for personal, family or household
20 purposes and are therefore a “debt” as that term is defined by 15 U.S.C.
21 §1692a(5).

22 25. These alleged obligations were money, property, or their equivalent, which is
23 due or owing, or alleged to be due or owing, from a natural person to another
24 person and are therefore a “debt” as that term is defined by California Civil
25 Code §1788.2(d), and a “consumer debt” as that term is defined by California
26 Civil Code §1788.2(f).

26. Sometime thereafter, but before November 28, 2013, Plaintiff allegedly fell behind in the payments allegedly owed on the alleged debt. Plaintiff currently takes no position as to the validity of this alleged debt.

27. Subsequently, but before November 28, 2013, the alleged debt was assigned, placed, or otherwise transferred, to Defendants for collection.

28. On or about November 28, 2013, Plaintiff provided Defendants a settlement offer of \$1,200 by written correspondence.

29. Subsequently, on or about December 6, 2013, Defendants responded to Plaintiff's offer to settle, mailing a dunning letter to Plaintiff. A few days later, Plaintiff received that letter.

30. Defendants' December 6, 2013 letter agreed to settle the issue for the amount Plaintiff suggested and further stated to Plaintiff in part, "Please be advised that the requested payment arrangement to settle the above referenced matter in the amount of \$1,200.00." Defendants' letter further stated "Pursuant to the terms agreed to, you will pay \$1,200.00 due on or before 12/20/2013 to settle the account in full."

31. However, notwithstanding the fact that the debt in question had already been settled, on or about December 10, 2013, without notice to Plaintiff, and after accepting Plaintiff's offer to settle, Defendants filed a state collection lawsuit against Plaintiff in the superior Court of San Bernardino, Case No. CIVDS1314741.

32. At the time Defendants filed this lawsuit, Defendants knew, or had reason to know, that Plaintiff would be submitting the agreed upon payment prior to December 20, 2013. Consequently, Plaintiff was not served until after December 20, 2013.

33. The purpose of filing this lawsuit was to cause Plaintiff to incur further costs and expenses with regard to the alleged debt, so that Defendants could obtain further funds from Plaintiff.

34. The purpose of filing this lawsuit was also to compel Plaintiff to pay approximately half of the debt with the promise of a settlement while planning on obtaining the rest of the debt through litigation.

35. On or about December 17, 2013, in accordance with Defendants' December 6, 2013 settlement acceptance letter to Plaintiff, Plaintiff mailed a settlement check in the amount of \$1,200.00 to Defendants by certified mail. At the time this was mailed, Plaintiff was unaware that Defendants had sued him in any manner.

36. On or about December 19, 2013, within the time-frame provided by Defendants for Plaintiff to make a settlement payment of \$1,200.00, Defendants signed for Plaintiff's certified mail.

37. Defendants demonstrated that it was accepting the payment \$1,200.00 as payment in full by refusing to return the \$1,200.00 paid by Plaintiff.

38. In summary, despite the parties agreement to settle, and despite Defendants providing Plaintiff until December 20, 2013 to pay under settlement agreement, Defendants filed a state collection lawsuit against Plaintiff on December 10, 2013.

39. Through this conduct, Defendants engaged in conduct the natural consequence of which was to harass, oppress, or abuse a person in connection with the collection of a debt. Consequently, Defendants violated 15 U.S.C. § 1692d.

40. Through this conduct, Defendants used a false, deceptive, or misleading representation or means in connection with the collection of a debt. Consequently, Defendants violated 15 U.S.C. § 1692e, 15 U.S.C. § 1692e(5), 15 U.S.C. § 1692e(10).

41. Through this conduct, Defendants made a false representation concerning the character, amount, or legal status of a debt. Consequently, Defendants violated 15 U.S.C. § 1692e(2)(A).

42. Through this conduct, Defendants used an unfair or unconscionable means to collect or attempt to collect any debt. Consequently, Defendants violated 15 U.S.C. § 1692f.

43. Through this conduct, Defendants were collecting an amount (including any interest, fee, charge, or expense incidental to the principal obligation) when such amount was not expressly authorized by the agreement creating the debt or permitted by law. Consequently, Defendants violated 15 U.S.C. § 1692f(1).

44. Because this violated certain portions of the federal Fair Debt Collection Practices Act as these portions are incorporated by reference in the Rosenthal Fair Debt Collection Practices Act, through California Civil Code § 1788.17, this conduct or omission violated Cal. Civ. Code § 1788.17.

CAUSES OF ACTION

COUNT I

FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)

15 U.S.C. §§ 1692 ET SEQ.

45. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.

46. The foregoing acts and omissions constitute numerous and multiple violations of the FDCPA, including but not limited to each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.

47. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from Defendants.

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COUNT II**ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT (ROSENTHAL ACT)****CAL. CIV. CODE §§ 1788-1788.32**

48. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.

49. The foregoing acts and omissions constitute numerous and multiple violations of the Rosenthal Act, including but not limited to each and every one of the above-cited provisions of the Rosenthal Act, Cal. Civ. Code §§ 1788-1788.32

50. As a result of each and every violation of the Rosenthal Act, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant, and Plaintiff be awarded damages from Defendant, as follows:

- An award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- An award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3);
- An award of actual damages pursuant to California Civil Code § 1788.30(a);
- An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b);
- An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c).

1 51. Pursuant to the seventh amendment to the Constitution of the United States of
2 America, Plaintiff is entitled to, and demands, a trial by jury.

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4 Respectfully submitted,

Hyde & Swigart

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7 Date: April 8, 2014

By: s/ Crosby S. Connolly
Crosby S. Connolly
Attorneys for Plaintiff

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